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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Ameritech Petition For Modification Of Certain LATA Boundaries In Ohio (Aurora, Northfield and Twinsburg Exchanges)	CC Docket No. 96-159

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice released June 27, 1997, AT&T Corp. ("AT&T") hereby submits its comments on Ameritech's petition to modify certain LATA boundaries in the state of Ohio. The Public Notice requests comment on a single issue: whether § 271 of the 1996 Act authorizes Ameritech to carry what is currently interLATA traffic originating in three Ohio exchanges without obtaining a modification of LATA boundaries. Ameritech's claim cannot be credited, and its petition should be summarily denied.

Under the petition's proposal, traffic originating in the Aurora, Northfield and Twinsburg exchanges, all of which are served by the Western Reserve Telephone Company ("Western") and are associated with the Cleveland LATA, would be carried by Western to its Hudson exchange, which is associated with the Akron LATA. From the Hudson exchange, traffic would be routed over Ameritech and Western facilities to

Ameritech's Akron exchange, in the Akron LATA.[1] This Extended Local Calling Service ("ELCS") plan would be provided to customers of the three exchanges in question on a one-way, non-optional, measured-rate basis.[2]

In supervising the divestiture of the Bell System, the District Court oversaw a process by which independent telephone company ("ITC") exchanges were deemed to be "associated" or "not associated" with adjacent LATAs. As the court explained:

> [I]f a particular Independent territory is considered to be 'associated' with the adjacent operating territory, then telecommunications traffic between these two areas is regarded as intra-LATA, and may be handled by the Operating Company. If, on the other hand, a particular Independent territory is considered to be 'not associated' with an Operating Company LATA, then the Operating Company would be prohibited under section II(D) of the decree from carrying traffic between the two areas, as this would be regarded as an inter-LATA service.[3]

ITC exchanges were associated with LATAs using criteria established by the Department of Justice. "Independent territory was treated as if it were Bell territory. Traffic is thus classified as intra-LATA if it would have been included within a LATA had it been

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1 See Ameritech Petition, p. 7 ("Petition"); Letter from Alan Baker, Ameritech, to William F. Caton, Acting Secretary, Federal Communications Commission, filed June 28, 1997. The Public Notice states that "Ameritech and Western facilities will be used to carry the traffic ... across the LATA boundary." Ameritech's June 28th letter states, however, that traffic "will first be carried by Western Reserve to its Hudson exchange, which is associated with the Akron LATA." Under the proposed ELCS plan, it appears that Ameritech facilities would be used only within the Akron LATA and its associated Hudson exchange (which is regarded as intraLATA -- see infra pp. 2-3). Under no construction of the Act could Ameritech carry this traffic across an in-region LATA boundary.

2 See Petition, p. 7; Petition Exhibit 4, p 1.

3 United States v. Western Electric, 569 F. Supp. 1057, 1111 n.234 (D.D.C. 1983). The District Court's opinion refers to ITCs' "territories" as being associated with particular LATAs; however, as the instant petition demonstrates, a single ITC's territory could be associated, on an exchange-by-exchange basis, with more than one LATA.

exclusively Bell territory. It is classified as inter-LATA if it would have required the establishment of a separate LATA."[4] Thus, ITC exchanges were associated with LATAs only if they met the same rigorous "community of interest" standards used to define the LATAs themselves.

In the absence of a modification of LATA boundaries, the instant ELCS proposal would permit an ITC and a BOC to agree to a scheme in which the ITC aggregates traffic from exchanges that the District Court determined should not be associated with a particular LATA, transports them to a different exchange that is associated with that LATA, and then delivers them to a BOC exchange inside that LATA. This result would subvert the entire purpose of the Modification of Final Judgment's ("MFJ") "association" regime by making the LATA in which a call originates irrelevant. Indeed, under this view, so long as an ITC is capable of transporting traffic to a given exchange, for MFJ purposes a BOC could treat that traffic as if it originated there. Plainly, no reasonable interpretation of the MFJ admits the conclusion that a BOC could have entered into such an arrangement prior to enactment of the 1996 Act.[5]

Ameritech contends, *inter alia*, that § 271(b)(4) authorizes it to engage in the proposed ELCS plan without obtaining a modification of LATA boundaries. This argument proves far too much, as it would permit ILECs to remove from the reach of

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4 Id., at 1111.

5 The Public Notice also seeks comment on whether § 271(f), which permits BOCs to offer certain "previously authorized" interLATA services, would permit Ameritech to carry traffic on the proposed ELCS route. As AT&T has shown, there is no basis for the assertion that the instant ELCS proposal would have been permissible under the MFJ. Accordingly, it is not surprising that neither Ameritech's petition nor its June 28th ex parte letter seek to rely on § 271(f).

potential competitors significant portions of their customer base -- customers that currently enjoy the benefits of a fully competitive interLATA market.

Section 271(b)(4) provides that "Nothing in this section prohibits a Bell operating company or any of its affiliates from providing termination for interLATA services, subject to Subsection (j)."[6] Ameritech argues that under the proposed ELCS arrangement, it should be deemed simply to be terminating interLATA calls carried by Western, and that Congress intended § 271 to permit such arrangements. This claim cannot withstand even brief scrutiny.

First, § 271(b)(4) was intended solely to clarify that the BOCs could terminate within their territories those out-of-region, incidental and interLATA calls that the act authorizes them to carry. In the absence of § 271(b)(4), Ameritech would be prohibited by § 271(b)(1) from "provid[ing] interLATA services originating in any of its in-region states." Section 153(42) defines "interLATA service" as "telecommunications between a point located in a local access and transport area and a point located outside such area." Thus, without a specific grant of authority to terminate its own authorized interLATA traffic, § 271(b)(1) arguably would prohibit a BOC from offering services that it is otherwise authorized to carry, but which terminate in its region. There is simply no

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[6] Section 271(j) prohibits BOCs from providing, prior to receiving § 271 relief in the relevant state, "800 service, private line service, or their equivalents" which terminate in that state and permit the called party to determine the interLATA carrier for the call. This provision appears to have been intended to prohibit a specific service authorized by the District Court and the Commission that might otherwise have been allowed under § 271(b)(4). See United States v. Western Electric, 1992 U.S. Dist. LEXIS 22349 (D.D.C. March 3, 1992); Provision of Access for 800 Service, CC Docket No. 86-10, issued April 21, 1989.

evidence of any kind that Congress intended § 271(b)(4) to expand the BOCs' authority to handle in-region interLATA traffic beyond that permitted under the MFJ.

If Ameritech's assertions are correct, an ITC and a BOC could transmogrify what it now in-region interLATA traffic into "intraLATA" traffic simply by routing calls to an exchange other than the one in which they originated, thus permitting the BOC to capture potentially significant volumes of what are now -- and under the MFJ were intended to be -- in-region interLATA calls. Moreover, if the ITC and BOC could persuade a state utilities commission to institute some type of mandatory extended calling plan such as the one at issue in this proceeding, they could insulate that traffic not only from competing IXCs, but from intraLATA competition as well, except on a dial-around basis.[7]

Further, although Ameritech nowhere addresses the issue, its claims directly contravene its fundamental equal access obligations. The petition's interpretation of § 271(b)(4) also places that section in direct conflict with key provisions of the 1996 Act that ensure equal access. Under the Commission's rules, Western and other ITCs must permit IXCs to carry interLATA traffic originating in their exchanges on a "1+" basis. Section 251(g) expressly preserves the equal access regime that existed prior to passage of the 1996 Act, while § 251(b)(3) requires all LECs to provide dialing parity. At bottom, Ameritech argues that merely by routing traffic through another exchange an ITC obtains the right to send all direct-dialed traffic terminating in a particular LATA to the incumbent

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[7] In states that had not instituted intraLATA dialing parity, no other carrier could handle such calls on a "1+" basis even in the absence of an extended area calling plan.

BOC, rather than permitting other carriers to compete to carry those calls on a direct-dialed basis. The petition's reading of § 271(b)(4) simply cannot be reconciled with the Commission's longstanding equal access regime, or with the provisions of the 1996 Act that explicitly preserve those requirements.

CONCLUSION

The instant petition proposes to take traffic that currently is carried by a wide variety of competing interLATA carriers and funnel it exclusively through the networks of two ILECs. The anticompetitive nature of Ameritech's proposal is plain, and is underscored by its claim that Congress granted BOCs the right to enter into such arrangements in the 1996 Act, a statute whose overarching goal is to promote competition. AT&T urges the Commission to reject Ameritech's interpretation of § 271(b)(4), and to deny its petition to modify LATA boundaries.

Respectfully submitted,

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July 11, 1997

CERTIFICATE OF SERVICE

I, Jacqueline M. Brady, hereby certify that on this 11th day of July, I served one copy of the foregoing Comments of AT&T Corp. by first class mail, postage prepaid, on the following:

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